

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



December 31, 2004

Regulation Package #0503-12

CDSS MANUAL LETTER NO. CCL-04-19

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22, DIVISION 6,
CHAPTER 4, SMALL FAMILY HOMES

Regulation Package #0503-12**Effective 9/15/04****Section 83072**

This manual letter has been posted on the Office of Regulations Development website at <http://www.dss.cahwnet.gov/ord/SmallFamili632.htm>.

These Community Care Licensing Division regulations incorporate certain provisions of Assembly Bill 899 (Chapter 683, Statutes of 2001) in all children's residential programs including group home, small family home and community treatment facility regulations by amending specific foster youth personal rights regulations in the California Code of Regulations, Title 22, Division 6, Chapter 1, General Licensing Requirements; Chapter 4, Small Family Home Regulations; Chapter 5, Group Home Regulations, Chapter 5, Subchapter 1 - Community Treatment Facility Regulations; and Chapter 5, Subchapter 2 - Care for Children Under the Age of Six Years.

These regulations were considered at the Department's public hearing held on September 17, 2003.

FILING INSTRUCTIONS

Revisions to all manuals are indicated by a vertical line in the left margin. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Community Care Licensing changes was Manual Letter No. CCL-04-18. The latest prior manual letter containing Small Family Homes regulation changes was Manual Letter No. CCL-01-08.

Page(s)**Replace(s)**

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27 through 30

Page 3
Pages 27 through 30

Attachments

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This Users' Manual is issued as an operational tool.

This Manual contains:

- a) Regulations adopted by the California Department of Social Services (CDSS) for the governance of its agents, licensees, and/or beneficiaries
- b) Regulations adopted by other State Departments affecting CDSS programs
- c) Statutes from appropriate Codes which govern CDSS programs; and
- d) Court decisions
- e) Operational standards by which CDSS staff will evaluate performance within CDSS programs.

Regulations of CDSS are printed in gothic type as is this sentence.

Handbook material, which includes reprinted statutory material, other department's regulations and examples, is separated from the regulations by double lines and the phrases **"HANDBOOK BEGINS HERE"**, **"HANDBOOK CONTINUES"**, and **"HANDBOOK ENDS HERE"** in bold print. Please note that both other department's regulations and statutes are mandatory, not optional.

In addition, please note that as a result of the changes to a new computer system revised language in this manual letter and subsequent community care licensing manual letters will now be identified by a line in the left margin.

Questions relative to this Users' Manual should be directed to your usual program policy office.

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**83070.1 ADDITIONAL CHILDREN'S RECORDS FOR SPECIALIZED
SMALL FAMILY HOMES****83070.1**

- (a) The licensee shall ensure that records for each child with special health care needs contain the following:
 - (1) Documentation that the child has been adjudged a dependent of the court under Section 300 of the Welfare and Institutions Code or has not been adjudged a dependent of the court under Section 300 of the Welfare and Institutions Code but is in the custody of the county welfare department, or has a developmental disability and is receiving services and case management from a regional center.
 - (2) A copy of the child's individualized health care plan as specified in Section 83069.1.
 - (3) A copy of the written reassessment of the child's individualized health care plan as specified in Section 83069.1(b).
- (b) The licensee of a specialized small family home not exceeding the two-child capacity limit shall ensure that each child's needs and services plan contains the following information in addition to the information required in Sections 83068.2 and 83068.3:
 - (1) Documentation by the child's county social worker, regional center caseworker or authorized representative that the needs of the child can be met by the facility.
 - (A) New documentation shall be obtained for all children and placed in the respective needs and services plans each time there is an increase or turnover in children and the home meets the conditions described in above Section 83070.1(b).
- (c) If a third child is placed in a specialized small family home, the licensee shall ensure that:
 - (1) The needs and services plan for the third child documents the determination specified in Section 83010.1(a)(1)(A).
 - (2) The needs and services plan for each child in the home documents the determinations specified in Section 83010.1(a)(1)(B) and (B)1.
 - (3) The individualized health care plan for each child with special health care needs documents the determinations specified in Sections 83010.1(a)(1)(C) and (C)1.

**83070.1 ADDITIONAL CHILDREN'S RECORDS FOR SPECIALIZED
SMALL FAMILY HOMES (Continued)****83070.1**

- (A) Documentation may be provided in different ways, including, but not limited to, a written statement from a member designated by the team that the team has been notified and has determined that the two-child limit may be exceeded.
- (d) If more than three children are placed in a small family home caring for children with special health care needs, the licensee shall ensure that:
 - (1) The needs and services plan for each child placed in excess of the two-child limit documents the determinations specified in Section 83010.1(a)(2)(A).
 - (2) The needs and services plan for each child in the home documents the determinations specified in Sections 83010.1(a)(1)(B) and (B)1.
 - (3) The individualized health care plan for each child with special health care needs documents the determinations specified in Section 83010.1(a)(2)(C) and (C)1.
 - (A) Documentation may be provided in different ways, including, but not limited to, a written statement from a member designated by the team that the team has been notified and has determined that the two child limit may be exceeded.
 - (4) Records for at least one of the children contains a regional center placement agreement documenting that the child is a regional center client as specified in Section 83010.1(b)(2)(D).

NOTE: Authority cited: Section 17730, Welfare and Institutions Code and Section 1530, Health and Safety Code. Reference: Sections 17710(a), 17731(c), and 17732(a) and (b), Welfare and Institutions Code and Section 1531, Health and Safety Code.

83072 PERSONAL RIGHTS**83072**

- (a) Each facility licensed to provide foster care for six or more children shall post a listing of a foster child's rights.
- (b) Each facility shall provide each school age child, who is placed in foster care, and his or her authorized representative with an age and developmentally appropriate orientation that includes an explanation of the rights of the child and addresses the child's questions and concerns.
- (c) At admission, each child, and his/her authorized representative, shall be personally advised of and given a copy of the child's rights as specified below:

83072 PERSONAL RIGHTS (Continued)**83072**

- (1) To have visitors, provided the rights of others are not infringed upon, including:
 - (A) Brothers and sisters, unless prohibited by court order.
 - (1) Other relatives, unless prohibited by court order or by the child's authorized representative.
 - (B) Authorized representative.
 - (C) Other visitors unless prohibited by court order or by the child's authorized representative.
- (2) To wear his/her own clothes.
- (3) To possess and control his/her own cash resources, maintain an emancipation bank account and manage personal income consistent with the child's age and developmental level, unless otherwise agreed to in the child's needs and services plan and by the child's authorized representative.
- (4) To possess and use his/her own personal possessions, including toilet articles.
- (5) To have access to individual storage space for his/her private use.
- (6) To make and receive confidential telephone calls, unless prohibited by court order.
 - (A) Reasonable restrictions to telephone use may be imposed by the licensee. The licensee shall be permitted to:
 - 1. Restrict the making of long distance calls upon documentation that requested reimbursement for previous long distance calls has not been received;
 - 2. Restrict phone use in accordance with the facility's discipline program;
 - 3. Impose restrictions to ensure that phone use does not infringe on the rights of others or restrict the availability of the phone during emergencies.
 - (B) All restrictions shall be documented in the child's needs and services plan or the facility's discipline policies, and be signed by the child's authorized representative.
 - (C) Calls permitted to be restricted by subsections (A)1. and (A)2. above shall not include calls to the child's authorized representative, placement agency, family members (except by court order), social workers, attorneys, Court Appointed Special Advocates (CASA), probation officers, Community Care Licensing Division of the California Department of Social Services or the State Foster Care Ombudsperson.

83072 PERSONAL RIGHTS (Continued)**83072**

- (7) To have access to letter writing material and to send and receive unopened correspondence unless prohibited by court order.
- (8) To be accorded dignity in his/her personal relationships with staff and other persons.
- (9) To live in a safe, healthy and comfortable home where he or she is treated with respect.
- (10) To be free of physical, sexual, emotional, or other abuse, and corporal punishment.
- (11) To receive adequate and healthy food, and adequate clothing.
- (12) To receive medical, dental, vision, and mental health services.
- (13) To be free of the administration of medication or chemical substances, unless authorized by a physician.
- (14) To contact family members (including brothers and sisters), unless prohibited by court order, and social workers, attorneys, foster youth advocates and supporters, Court Appointed Special Advocates (CASA), and probation officers.
- (15) To contact the Community Care Licensing Division of the California Department of Social Services or the State Foster Care Ombudsperson regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making complaints.
- (16) To be informed, and to have his or her authorized representative informed by the licensee of the provisions of law regarding complaints including, but not limited to, the address and telephone number of the complaint receiving unit of the licensing agency, and of information regarding confidentiality.
- (17) To be free to attend religious services or activities of his/her choice and to have visits from the spiritual advisor of his/her choice. Attendance at religious services, in or outside of the facility, shall be on a completely voluntary basis.
- (18) To not be locked in any room, building, or facility premises at any time.
 - (A) The licensee shall not be prohibited by this provision from locking exterior doors and windows or from establishing house rules for the protection of clients provided the clients are able to exit the facility.

83072 PERSONAL RIGHTS (Continued)**83072**

- (B) The licensee shall be permitted to utilize means other than those specified in (A) above for securing exterior doors and windows only provided the clients are able to exit the facility and with the prior approval of the licensing agency.
- (19) To attend school and participate in extracurricular, cultural, and personal enrichment activities consistent with the child's age and developmental level.
- (20) To work and develop job skills at an age-appropriate level that is consistent with state law.
- (21) To have social contacts with people outside of the foster care system, such as teachers, church members, mentors, and friends.
- (22) To attend Independent Living Program classes and activities if he or she meets age requirements.
- (23) To attend court hearings and speak to the judge.
- (24) To review his or her own case plan if he or she is over 12 years of age and to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan.
- (25) To be free from unreasonable searches of personal belongings.
- (26) To confidentiality of all juvenile court records consistent with existing law.
- (27) Not to be placed in any restraining device. Postural supports may be used if they are approved in advance by the licensing agency as specified in (A) through (F) below.
 - (A) Postural supports shall be limited to appliances or devices including braces, spring release trays, or soft ties used to achieve proper body position and balance, to improve a client's mobility and independent functioning, or to position rather than restrict movement including, but not limited to, preventing a client from falling out of bed, a chair, etc.
 - 1. Physician-prescribed orthopedic devices such as braces or casts used for support of a weakened body part or correction of body parts are considered postural supports.
 - (B) All requests to use postural supports shall be in writing and include a written order of a physician indicating the need for such supports. The licensing agency shall be authorized to require other additional documentation in order to evaluate the request.
 - (C) Approved postural supports shall be fastened or tied in a manner which permits quick release by the child.

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83072 PERSONAL RIGHTS (Continued)**83072**

- (D) The licensing agency shall approve the use of postural supports only after the appropriate fire clearance, as required by Section 80020(a) or (b), has been secured.
 - (E) The licensing agency shall have the authority to grant conditional and/or limited approvals to use postural supports.
 - (F) Under no circumstances shall postural supports include tying of, or depriving or limiting the use of, a child's hands or feet.
 - 1. A bed rail that extends from the head half the length of the bed and used only for assistance with mobility shall be allowed with prior licensing approval. Bed rails that extend the entire length of the bed are prohibited.
 - (G) Protective devices including, but not limited to, helmets, elbow guards, and mittens which do not prohibit a client's mobility but rather protect the client from self-injurious behavior are not to be considered restraining devices for the purpose of this regulation. Protective devices may be used if they are approved in advance by the licensing agency as specified below.
 - 1. All requests to use protective devices shall be in writing and include a written order of a physician indicating the need for such devices. The licensing agency shall be authorized to require additional documentation including, but not limited to, the Individual Program Plan (IPP) as specified in Welfare and Institutions Code Section 4646, and the written consent of the authorized representative, in order to evaluate the request.
 - 2. The licensing agency shall have the authority to grant conditional and/or limited approvals to use protective devices.
 - (H) Under no circumstances shall postural supports or protective devices be used for disciplinary purposes.
- (d) Nothing in this section shall be interpreted to require a foster care provider to take any action that would impair the health and safety of children in out-of-home placement.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1530.91, and 1531, Health and Safety Code; and Section 16001.9, Welfare and Institutions Code.

83072.1 DISCIPLINE**83072.1**

- (a) Any form of discipline which violates a child's personal rights as specified in Sections 80072 and 83072 shall be prohibited.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501 and 1531, Health and Safety Code.

83072.2 ADDITIONAL PERSONAL RIGHTS FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS**83072.2**

- (a) Except as specified in this section, Section 80072(a)(8) shall not apply to children with special health care needs.
- (b) A child with special health care needs has the right to be free from any restraining/postural support device imposed for purposes of discipline or convenience, and not required to treat the child's specific medical symptoms.
- (1) Physical restraining devices may be used for the protection of a child with special health care needs during treatment and diagnostic procedures such as, but not limited to, intravenous therapy or catheterization procedures. The restraining device, which shall not have a locking device, shall be applied for no longer than the time required to complete the treatment and shall be applied in conformance with the child's individualized health care plan. The child's individualized health care plan shall include all of the following:
- (A) The specific medical symptom(s) that require use of the restraining device.
- (B) An evaluation of less restrictive therapeutic interventions and the reason(s) for ruling out these other practices as ineffective.
- (C) A written order by the child's physician. The order must specify the duration and circumstances under which the restraining device is to be used.
- (2) Postural supports, as specified in Sections 80072(a)(8)(A) and (A)1., half-length bed rails, and protective devices as specified in Section 80072(a)(8)(G), may be used if prescribed in the individualized health care plan. The use of a postural support or protective device and the method of application shall be specified in the child's individualized health care plan and approved in writing by the child's physician.

NOTE: Authority cited: Section 17730, Welfare and Institutions Code and Section 1530, Health and Safety Code. Reference: Section 17736, Welfare and Institutions Code.